DELIBERATIONS

The committee held its first meeting on September 11, 1989 shortly after the effective date of the enabling legislation. As its first order of business, the committee nominated and elected as Co-chairmen Senator Edward C. Dupont, District 6 and Majority Leader; and Representative Beverly T. Rodeschin, Sullivan District 2 and Chairman of the House Science Technology and Energy Committee. The committee elected Jonathan Osgood, director of the Governor's Energy Office, as clerk. That first session established guidelines for the committee and a schedule of monthly meetings and permitted members to outline their concerns and expectations.

At the second meeting, the committee reviewed the State's siting laws, RSA 162-F and 162-H. The former was written to provide a mechanism through which electrical generating plants above 50 megawatts (mw) could be judged by a single entity in state government. RSA 162-H provided a similar forum concerned with energy facilities including refineries and pipelines.

The committee immediately questioned the need for separate siting boards when the composition and duties of each was essentially the same. The committee appointed a subcommittee to examine the possibility of integrating the two boards. The subcommittee found no particular rational for maintaining separate boards.

Over the next several months, the subcommittee discussed modifications to combine the boards. Changes were put in writing by Commissioner Bruce Ellsworth and the staff of the Public Utilities Commission (PUC).

The final major effort was to fully combine the individual passages of the new law so that it did not repeat requirements and was specific in its application to each type of facility. The resulting document was presented to the members at the May meeting of the full committee and became the document upon which all further modifications were made.

During the course of its deliberations, the committee learned that New Hampshire's siting laws were already among the most effective and least intrusive in the nation. In fact, the National Governors' Association Transmission Task Force had recognized the State's siting process as an example to other states of how siting should be conducted. Never-the-less, the committee noted specific flaws, ambiguities and omissions which could be clarified.

Informal testimony was taken from members of the committee. In the course of discussion several recommendations were made. Included was the suggestion that the other two Public Utility Commissioners added to the Site Evaluation Committee (SEC). (THE SUGGESTION WAS ENDORSED AND IMPLEMENTED.)

The need for greater public involvement in the process of siting facilities featured highly in many of the deliberations of the committee and the subcommittee. The two existing statutes require that public notices be placed in a newspaper having circulation in the counties which would host public meetings. (IN THE REVISIONS, THE COMMITTEE INCORPORATED REQUIREMENTS THAT MUNICIPALITIES BE NOTIFIED THROUGH THEIR TOP ELECTED OFFICIAL AND ADDITIONAL NEWSPAPERS BE USED FOR PUBLIC NOTICE.)

It was noted that the present statutes specifically preclude direct questioning of the applicants by the public at the informational hearings which initiate the existing siting committees' hearings procedure. Concern was expressed that the public could feel alienated from the process as a consequence. (THE COMMITTEE ELIMINATED THIS EXCLUSION IN ITS REDRAFT OF THE SITING PROCEDURE.)

The committee noted that there was some uncertainty of which facilities were covered by siting laws. In the case of bulk power plants, there is no description of how facilities which generate more than 30mw but less than 50mw should be evaluated. The Limited Electrical Energy Producers Act (RSA 362-A) was amended in 1989 to cover plants up to 30mw, but a gap remained. (AFTER CONSIDERABLE DISCUSSION, THE COMMITTEE RECOMMENDS LOWERING THE THRESHOLD OF SUBMISSION TO THE SEC TO 30MW TO REMOVE THE AMBIGUITY. MANY FELT THAT THIS WOULD ALLOW THE GREATER GOOD TO BE EXPRESSED BY ALLOWING CONSIDERATION OF A PROJECT, AS A WHOLE, AT THE STATE LEVEL.)

The committee recognized that any arbitrary number may, as an inadvertent consequence encourage the development of facilities sized just under the threshold to avoid the siting process. (TO PREVENT THIS AND TO ALLOW FACILITIES OF SMALLER SIZE TO BE EVALUATED AS PART OF THE STATE-WIDE ENERGY SUPPLY PICTURE, THE COMMITTEE, AFTER LONG AND ANIMATED DEBATE STRETCHINGOVER THREE MEETINGS, CHOSE TO INCLUDE LANGUAGE ALLOWING THE PUC OR THE SEC TO EVALUATE OTHER PROPOSED PROJECTS.)
Inexact language was also contained in 162-H. For example, the preamble mentions that it covers "ancillary facilities" including storage tanks, but gives no guidance as to what size tanks are covered. (THE COMMITTEE DEFINED THE SIZE OF GAS STORAGE FACILITIES TO RECEIVE SCRUTINY TO THE AMOUNT OF GAS NEEDED TO OPERATE A GENERATION PLANT AT 30 MW FOR A SEVEN DAY PERIOD.)

There was general agreement that the 14 month time frame for approval of energy facilities was unnecessarily long and might preclude the construction of needed plants. (THE COMMITTEE SEPARATED THE PROCESS OF RECEIPT OF THE APPLICATION AND ITS ACCEPTANCE AND REDUCED THE TIME FRAMES TO A TOTAL OF 11 MONTHS FOR ENERGY FACILITIES AND 12 MONTHS FOR BULK POWER GENERATORS. THAT TIME IS BROKEN DOWN INTO A 2 MONTH TIME PERIOD DURING WHICH THE COMMITTEE CONSIDERS WHETHER TO ACCEPT OR REJECT THE APPLICATION AND 9 MONTHS TO EVALUATE THE PROPOSALS. A FURTHER MONTH IS RESERVED FOR THE PUC TO CONSIDER THE RECOMMENDATIONS OF THE SEC WHEN A BULK POWER GENERATOR IS INVOLVED.)

Timing is a critical concern to plant construction and the existing legislation failed to provide easily accessible time frame information. (THE REVISION CONTAINS A SEPARATE SECTION 162-H:6 WHICH SPELLS OUT ALL OF THE TIME LIMITS.)

Some question existed as to the responsibility of state agencies not represented on the Site Evaluation Committee to meet time frames and to provide feedback. (THE COMMITTEE ADDED A PROVISION REQUIRING THOSE AGENCIES TO REPORT PROGRESS WITHIN 5 MONTHS OF THE ACCEPTANCE OF THE APPLICATION AND TO RENDER A FINAL DECISION WITHIN 8 MONTHS.)

Considerable discussion involved the need to educate the public of the necessity of siting certain facilities. It was observed in a recent case, that the public thought the process was concluding with the initiation of the public sessions when, in fact, it was commencing. (THE COMMITTEE REMOVED THE LIMITATION THAT ONLY ONE INFORMATIONAL HEARING TAKE PLACE IN EACH AFFECTED COUNTY AND DIRECTED THE APPLICANT TO HOLD ADDITIONAL INFORMATIONAL HEARINGS UPON THE REQUEST OF A COMMUNITY OR THE COMMITTEE.)

The committee discussed at length whether or not it would be possible to provide the siting committee with the power, or ability, to negotiate a resolution of conditions which caused an agency not represented on the SEC to reject an application. It was felt that the opportunity for such discussion already existed among agencies represented on the SEC. (LANGUAGE WAS ADDED PERMITTING THE SEC TO RECOMMEND SPECIFIC PERMIT CONDITIONS WHICH IT FELT WOULD MEET THAT AGENCY'S CONCERN.)

The committee recommended the inclusion of the Director of the Governor's Energy Office on the SEC to advise on the overall energy requirements of the state and to promote energy conservation alternatives. (THE COMMITTEE DID SO.)

It was suggested that members of the SEC be allowed to designate alternates. (THE COMMITTEE CONCLUDED THAT SITING ENERGY FACILITIES AND POWER PLANTS WAS SO SIGNIFICANT TO THE OVERALL ECONOMIC AND ENVIRONMENTAL CONDITION OF THE STATE, THAT IT REQUIRED THE ACTIVE PARTICIPATION OF THE AGENCY HEADS, THEMSELVES.)

The committee noted that under the bulk power facility siting requirements, an applicant need not prove financial, technical and managerial ability. When the 162-F was written, the only builders of electrical plants were established utilities with a proven record. The emergence of the small power production market has made that assumption invalid. (THE COMMITTEE INCORPORATED LANGUAGE CONTAINING SUCH REQUIREMENT INTO THE INTEGRATED STATUTE.)

In discussion of the time frames, it was understood that the physical requirements for certain environmental studies take longer than the committee is allowed. (LANGUAGE SPECIFICALLY ALLOWING THE SITE EVALUATION COMMITTEE TO MAKE PERMITS CONDITIONAL UPON THE RESULTS OF FEDERAL AGENCY STUDIES WAS ADDED.)

Further testimony was taken from specific individuals who either expressed an interest in sharing ideas with the committee or who were invited to contribute. Assistant Attorney General Charles B. Holtman, who has served as Counsel to the Public under RSA 162-H on the two most recent occasions it has deliberated was asked to consider the progress of the committee and to offer recommendations. Mr. Holtman's comments were carefully prepared and delivered. First, he met with the subcommittee to comment on the work done to that time and to discuss the needs of the subcommittee. He assisted the committee by documenting his experience as counsel and making suggestions as to how the process might be improved. The following is a summary of his recommendations made by letter submitted in February of 1990.

Under present statute, an application to the committee is not considered received until the committee meets and deems it complete. It is at this time that the public counsel is appointed. His recommendation was to remove the reference to the point during the evaluation process when the public counsel is appointed. This would facilitate an earlier appointment, allowing the counsel to develop a strategy and a position on a proposal. The counsel could take necessary and appropriate actions in a more timely fashion and represent the public in a capacity now not possible. (THE COMMITTEE CONCURS AND REMOVED REFERENCE TO WHEN THE PUBLIC COUNSEL SHOULD BE APPOINTED.)
He recommended mandating that the applicant reimburse the public counsel for the expense of consultants, investigations and other related costs of public representation. This would insure that the application received a full study without forcing the public counsel, and therefore the state's general fund, to pay for work needed by the counsel. (THE COMMITTEE FELT THAT THE EXISTING PROCESS UNDER WHICH THE EXISTING SITING COMMITTEES DIRECTED THE APPLICANT TO PAY FOR STUDIES CONSIDERED TO BE JUSTIFIED WAS ADEQUATE AND WOULD PRECLUDE ANY UNWARRANTED INVESTIGATIONS.)

Mr. Holtman expressed support for a committee proposal to allow direct questioning from the public at public hearings. It not only would allow for more public participation, but also allow the public counsel to gauge public opinion. (THE COMMITTEE HAS REMOVED THE STIPULATION THAT ONLY THE SEC QUESTION THE APPLICANT AT THE INFORMATIONAL HEARINGS.)

He recommended simplifying the procedures by which a member of the public or a town government is allowed to speak at hearings. The preferred procedure is simply to allow any member of the public, or any town, to file a motion "to intervene" at the hearing and let it be ruled on by the Chairman of the committee. In other words, empower the Chair to recognize speakers during the hearing to submit what they will, either written or oral in nature. (THE COMMITTEE FELT THAT NOTHING CONTAINED IN THE LEGISLATION INHIBITED THE PUBLIC'S ABILITY TO PROVIDE INPUT.) Because of the nature of adversarial proceedings, the requirement to pre-file testimony is restrictive and antiquated. It subtracts from the natural "discovery process" that occurs and hampers the hearing. This provision should be removed for the adversarial proceedings, though it may be maintained for the informational ones. (THE COMMITTEE FELT THAT THE EXISTING PROCESS PROVIDED THE MOST EFFECTIVE MECHANISM TO INSURE ACCURATE INPUT TO THE ADVERSARIAL HEARINGS.)

Mr. Holtman makes the recommendation that certain studies, such as wildlife, archaeological, and air emission modeling, should be submitted before the application is deemed complete. This procedure would help to avoid problems incurred when a statutory deadline is shorter than the time required to conduct the studies. This could jeopardize the project in that it could force the public counsel to take a position demanding the studies be completed before the review process was initiated, hence lengthening the process. (THE COMMITTEE NOTED THAT THE NEED FOR SOME STUDIES WILL ONLY BE IDENTIFIED BY THE HEARINGS AND THAT THERE IS NOTHING IN THE LEGISLATION WHICH SUGGESTS THAT AN APPLICANT COULD NOT INITIATE THE STUDIES DEFINITELY REQUIRED PRIOR TO FILING AN APPLICATION WITH THE SEC.)

To shorten the overall time frame for review, Attorney Holtman made the following suggestions: (1) Retain the existing time limit, measured from the point of application completeness (14 months for the SEC and 16 months for the PUC), as the outside limit for project review. (2) Require that final decisions be made within a certain time from the close of adversarial hearings, for example, one month for subsidiary agencies and three months for the committee. (3) Direct the committee chairman, following a conference with the parties, to establish a schedule for the hearing process--which allows for a great measure of flexibility and shorter periods of review. (THE COMMITTEE SAW THE WISDOM OF SHORTENING THE TIME FRAME OF THE DELIBERATION WHEN SPECIFYING THE DISTINCTION BETWEEN RECEIPT AND ACCEPTANCE OF THE APPLICATION AS NOTED BELOW.)

He urged amending the statute to insure a clear distinction between the actual "receipt of an application" and the committee's determination that an application is complete, ensuring that the latter point serves as the trigger date for the initiation of proceedings. (THE COMMITTEE AGREED WITH THIS POINT AND LIMITED THE TIME BETWEEN RECEIPT OF THE APPLICATION AND ITS ACCEPTANCE TO 60 DAYS, WITH THE PROVISION THAT AN APPLICATION IS NOT DEEMED RECEIVED UNTIL IT CONTAINS ALL REQUIRED INFORMATION.)

Attorney Holtman noted that current provisions mandate that agencies with jurisdiction need only notify the applicant if the application is not complete and suggested changing it to require all said agencies to reply in writing within one month of receiving the application. (THE COMMITTEE DETERMINED THAT THERE WAS NO COMPELLING REASON TO IMPOSE THIS ADDITIONAL REQUIREMENT ON AGENCIES.)

Mr. Holtman recommended providing general authority for the chairman to toll the running of the statutory time frame, on his own motion or at the request of the party, if it is determined that additional information is needed. (NEW SECTION 162-H:16 SPELLS OUT THE SEC'S ABILITY TO TEMPORARILY SUSPEND ITS DELIBERATIONS.)

He opposed the proposed four-month time limit for an agency decision inadvertently written in an early draft. The limit could have serious adverse effects on basic timing requirements already in effect. (THE COMMITTEE CORRECTED THE ERROR BY REQUIRING A PROGRESS REPORT FROM AGENCIES WITHIN 5 MONTHS AND A FINAL DECISION WITHIN 8 MONTHS.)

He suggested that applications include written documentation from each affected town, signed by the town's designated contact, that it has been notified of the proposal and of the state review process. (THE COMMITTEE CHOSE TO REQUIRE THE APPLICANT TO DOCUMENT THAT THE CHIEF ELECTED OFFICIAL IN EACH COMMUNITY HAD BEEN NOTIFIED IN WRITING.)

He recommended that appropriate bodies of a affected communities be automatically placed on the service list, insuring that they are actually notified and not reliant on published notice during the course of the proceedings. (Provision of intervention as of right.) (THE COMMITTEE FELT THAT COMMUNITIES SHOULD REQUEST TO BE ON THE SERVICE LIST.)

Mr. Holtman recommended allowing the towns to conduct their own review processes because this would permit a more local response to routing decisions. (THE COMMITTEE FELT THAT IT WAS UNREASONABLE TO EXPECT COMMUNITIES TO REVIEW FACILITIES IN SEPARATE PROCESSES WHEN THE DECISION OF THE SEC IS DEFINED TO BE

THE FINAL AUTHORITY. IT WAS FELT THAT THE ONE STOP SITING CONCEPT THAT IS THE BASIS OF NH'S SITING STATUTES WOULD BE SEVERELY UNDERMINED AND THE ABILITY OF THE SEC TO EVALUATE THE OVERALL SOCIAL IMPACTS OF FACILITIES WOULD BE COMPROMISED.)

Mr. Holtman noted that the relationship between the "Declaration of Purpose" and the "Findings" sections are unclear. He believed specific findings are required in addition to, and not in lieu of, the concepts enunciated in the "Declarations of Purpose". Therefore, he recommended explicitly tying the "Findings" to the "Declaration of Purpose". (THE COMMITTEE, IN INTEGRATING THE TWO STATUTES AND COMBINING THE FINDINGS REQUIREMENTS IN EACH, REMOVED THE AMBIGUITY.)

He suggested that in order to raise awareness of energy conservation needs, declarations of purpose and perhaps the findings sections should state that conservation possibilities are to be considered in weighing the need for proposed facilities. (THE COMMITTEE INCLUDED SPECIFIC REFERENCE TO RSA 378:37 WHICH DEFINES LEAST COST ENERGY PLANNING AS STATE POLICY. FURTHERMORE THE COMMITTEE MADE THE DIRECTOR OF THE GOVERNOR'S ENERGY OFFICE A MEMBER OF THE SEC.)

Attorney John Dabuliewicz, who had been General Counsel to the Energy Facility Evaluation Committee in the Champlain Pipeline proceedings agreed to address the committee. His suggestions are summarized as follows along with the committee's response:

He recommended that a specific preapplication process should be developed and public counsel should be available to participate in preapplication process. (AS NOTE EARLIER, THIS PROVISION WAS ACCEPTED BY THE COMMITTEE AND INCORPORATED IN THE REDRAFT.)

He said the use of each agency's forms should specified as comprising the Site Evaluation Committee application. and provision for each agency to collect its own fees should be specified. (SPECIFIC LANGUAGE WAS ADDED TO INCORPORATE THIS RECOMMENDATION.)

Attorney Dabuliewicz commented that the committee should have one name. (THE COMMITTEE WILL BE KNOWN AS THE SITE EVALUATION COMMITTEE.)

The ability of the site evaluation committee to suspend proceedings should be clarified, he asserted. (THE COMMITTEE CONCURRED ADDING LANGUAGE IN SECTION 162-H:16 WHICH ALLOWS SUSPENSION OF DELIBERATIONS IF IT IS IN THE PUBLIC INTEREST.)

He felt that the requirement that 5 year plans be filed by utilities should be clarified to exclude small power producers. (THOSE WHO DEAL WITH THESE PLANS FEEL THAT THERE IS ADEQUATE UNDERSTANDING OF THE SYSTEM NOW.)

He noted that time frames must contain provisions for delays caused by federal agencies and the applicant itself. (THE COMMITTEE ADDED LANGUAGE IN SECTION 162-H:18,VII STATING THAT THE CERTIFICATE MAY BE CONDITIONED UPON THE RESULTS OF REQUIRED FEDERAL AGENCY STUDIES WHOSE STUDY PERIOD EXCEEDS THAT OF THE APPLICATION PERIOD.)

Mr. Dabuliewicz noted that executive order agency personnel typically are not be included in legislation. (AS NOTED ABOVE, THE COMMITTEE CHOSE TO INCLUDE THE DIRECTOR, GOVERNOR'S ENERGY OFFICE, TO REPRESENT THE CONSERVATION ALTERNATIVES. THE SIGNIFICANCE OF THAT NEED OUTWEIGHS OTHER CONCERNS.)

Finally he recommended that the entire revision should be redrafted to more closely integrate the two existing statutes. (THE RECOMMENDED BILL WAS REDRAFTED TO DO SO.)